Framework of BDCP Issues

Issue Distilled	EPA Draft Comments (August 2014)	State Water Board Draft Comments (July 2014)	Lead Agency Progress Assessments (July 2013)	Will's Outstanding Issues List (July 2014)	U.S. Army Corps Draft Comments (July 2014)	Outside Comments (March through May 2014)	EPA Recommendation (August 2014)
The project precludes attainment of water quality standards in the Delta.	"The Draft EIS shows that operating all of the proposed conveyance facilities, which constitute Conservation Measure 1 (CM1), would contribute to increased and persistent violations of **Clean Water Act** water quality standards in the Delta measured by electrical conductivity (EC) and chloride concentrations."	"The EIR/EIS concludes that preferred Alternative 4 may cause unavoidable adverse impacts to chloride and electrical conductivity (EC) levels in the Delta and Suisun Marsh which will increase the frequency of violations of **DWR's and USBR's water right permit and license conditions** to meet water quality objectives included in **State Water Board Decision 1641 (D-1641)."**	Nothing specific but these water quality standards are in place to protect beneficial uses of aquatic life. The project purpose is to lead to **recovery of listed species via a Habitat Conservation Plan (ESA).**	7. Water Quality Strategy	Nothing this specific but it is needed for 404 permit. EPA **404(b)(1) Guidelines** prohibit the Corps from granting a permit for projects that violate state water quality standards.	"Exceeding water quality objectives is a significant impact, which requires fully-defined mitigation measures be included in the EIR/S." (**CEQA Issue**) –Delta Stewardship Council 5.29.14	We recommend that the Supplemental Draft EIS include an alternative that does not increase the current magnitude or frequency of exceedance of water quality objectives, while at the same time addresses the need for water availability and greater freshwater flow. (explore options for outflow)
Increased	"We are	"The justification	"There are	1. b. flows	Not mentioned	"To fully comply	We recommend

Outflow	concerned over the sole reliance on habitat restoration for ecosystem recovery, recognizing that existing freshwater diversions and significantly diminished seaward flows have played a significant role in precluding the recovery of Bay Delta ecosystem processes and declining fish populations."	for this limited range of Delta outflow scenarios is not clear given that there is significant information supporting the need for more Delta outflow for the protection of aquatic resources and the substantial uncertainty that other conservation measures will be effective in reducing the need for Delta outflow. For this reason a broader range of Delta outflows should be considered for the preferred project."	several flow-survival and flow-abundance relationships available that should be considered for use in this analysis."	sufficient for salmon/sturgeon 4. Decision tree		with **Water Code 85320(b)(2)** the BDCP should quantify the water supply needs of in-Delta beneficial uses and compare its flow criteria against a range of hydrological conditions to determine the remainder of flows available to support exports" (Delta Stewardship Council 5.29.14).	that the Supplemental Draft EIS consider measures to ensure freshwater flow that can meet the needs of those populations and the ecosystem as a whole and is supported by the best available science.
Project Description	"The proposed project evaluated in the Draft EIS is not fully defined. EPA is aware that interagency discussions with the project proponents regarding key aspects of the	"As of the date of the Public Drafts of the BDCP and EIR/EIS no agreement had been reached concerning how RTOs will affect the BDCP flow related requirements. These	"The ADEIS is missing a clear, full and complete project description"	1. Bypass Flows and Outflow 2. Real-time ops 4. Decision-tree	"The EIS/EIR does not contain the information and analysis **needed for our permit decisions**, including, but not limited to, a complete project description."	Not specifically addressed but many comments encompass missing analyses and uncertainties	Fully describe the proposed project and reasonable alternatives, including information that is integral to decisions that are being made about the proposed project design and operations.

	proposed project are ongoing."	requirements are relied upon in the EIR/EIS to reduce impacts to less than significant levels. However, it is unclear whether the RTOs will be adequate until they have been fully developed and reviewed, especially given that the considerations for RTOs may have mutually exclusive purposes."					
Scope of the Analysis	"The Draft EIS does not address how changes in the Delta can affect resources in downstream waters, such as San Francisco Bay, and require changes in upstream operations, which may result in indirect environmental impacts that must also be evaluated." - **NEPA**	"The impacts assessment should both evaluate potential impacts downstream of the Delta and propose appropriate monitoring and mitigation to address those impacts. Specifically, the EIR/EIS should evaluate project effects on water quality and the various beneficial uses of water in	"The lack of analysis of upstream operations and related effects may render this document insufficient to provide **NEPA compliance** for the full suite of actions necessary to integrate the BDCP into CVP operations" (July 2013). "Reclamation is listed as a lead agency but the	3. Upstream Operations	Nothing specific but the Corps gives a lengthy list of projects (including the Deep Water Ship Channels) that should be included in the cumulative effects analysis because they either affect or will be affected by the project.	"The current Effects Analysis does not consider the influence of shifting timing of withdrawals on San Francisco Bay circulation patterns and ecology. This is a significant omission with ecologically important implications" (Independent Review Panel Report 3.2014)	We recommend that the Supplemental Draft EIS include an analysis of upstream and downstream impacts.

		the Bay area, including effects on anadromous and other fish species."	whole of Reclamation's actions is not analyzed (i.e. Delta vs whole CVP)"				
Habitat Restoration	Uncertainty of success is high given restoration success rates and available acreage	"The EIR/EIS and BDCP appear to assume that natural community restoration will be 100 percent successful. This is highly optimistic given the current status of the science regarding this issue."	Not mentioned but related to adaptive management	Not present	Not mentioned but related to programmatic vs project-level information concerns	"Many of the impact assessments hinge on overly optimistic expectations about the feasibility, effectiveness, or timing of the proposed conservation actions, especially habitat restoration" (Delta Independent Science Board 5.15.14). "Timelines for achieving benefits from habitat restoration may be overly optimistic" (Delta Stewardship Council 5.29.14). "A broad consensus exists among the panel that Ch. 5 does	Discuss restoration methods, performance metrics, and documented success rates for each habitat restoration type proposed. Work with the federal and state wildlife agencies to develop analytical methods to evaluate gradients of partial success for each habitat type.

						not adequately acknowledge the extensive uncertainty associated with the BDCP assumptions and predictions" (Independent Review Panel 3.2014).	
Alternatives	None of the Alternatives appears to contribute to improvement in water quality or species recovery	Over-constrained range of operations	"Alternative Comparisons-incorrect and/or insufficient information and analyses"	Not present, but could be related to the decision tree	"The incomplete information and analysis would prevent us from making any decision based on the EIS/EIR as it is currently written, including making a recommendation on which alternative may contain the LEDPA."	"It is still not clear how many of the 8 different operational scenarios and 15 alternatives carried forward for complete analysis include flow criteria and what the range of such criteria is" (Delta Stewardship Council 5.29.14).	Other reasonable alternatives could be developed by incorporating a suite of measures, including Integrated Water Management, water conservation, levee maintenance, and decreased reliance on the Delta.
Project-level vs. Programmatic Information	Programmatic information was used to make project-level decisions	Not specifically mentioned but related to concerns re: qualitative results turned into quantitative results	"notwithstanding the lack of specific detail in this document, NMFS will want to make sure that sufficient detail is provided for CM2-22 to allow us to make the necessary **findings under ESA Section 10**	Not present	"Mitigations for CM1 are included in several of the other CMs; therefore, they are directly related to the feasibility of implementation of CM1 and impacts should be assessed at	"Currently CM1 is treated at a project level… additional detail should be provided, specifying ranges of possibilities or approximate actions wherever possible" (Delta Independent Science Board	We recommend that the Supplemental Draft EIS include project-level information and analyses for the conveyance tunnels to support the federal decision, including the information necessary for permit decisions.

			and 7 that the effects of the project have been mitigated to the maximum extent practicable**."**		the project level." **404(b)(1) analysis**	5.15.14). "Assessment of important impacts of the BDCP is hindered because conservation measures other than improved conveyance are assessed only at the programmatic level" (Delta Stewardship Council 5.29.14).	
NEPA Effects Determinations	"We recommend that the Supplemental Draft EIS describe the decision rules that are used to make *NEPA Effects Determinations* from the analytical information presented for each impact category. "	"In the NEPA and CEQA analyses, conclusions for Alternatives 4 and 8 appear to be treated differently with respect to a finding of significant effects of operations on spawning and egg incubation habitat." Many other specific examples provided	"The analysis methodology for determining impacts is sufficient but some sections do not follow the methodology described in the document." "The document fails to maintain consistency among the conclusions and the analytical results behind those conclusions."	Not present	Not specifically mentioned but mitigation ratios and impacts to wetland impacts are incorrect in the document.	"The third major theme of this review is the lack of an integrated or quantitative assessment of net effects, echoing a similar review comment in the Phase 2 review" (Independent Review Panel 3.2014).	We recommend that the *NEPA Effects Determinations* and thresholds -- quantitative when possible – be provided for each category so that it is clear why some estimated impacts result in one *NEPA Effects Determination* over another.
Adaptive Management	The Draft EIS explains that the	"The details for how the adaptive	"Neither the concept of	5. a. decision-making process	Not specifically mentioned	"Details of how the adaptive	We recommend that a more

	adaptive management program is a work in progress. The specific approach for an adaptive management program and its effect on environmental consequences is fundamental to the success of the BDCP and should be addressed during the NEPA process.	management provisions will be implemented are not provided… it is therefore difficult to determine whether the measures will have the expected results or be adequate to reasonably **protect beneficial uses of water and the public trust."**	adaptive limits nor a draft example of them is included." (related to **ESA HCP** requirements)	for BDCP Adap. Mgmt b. Science Program for Adap. Mgmt		management will be implemented are left to a future management team without explicit prior consideration of (a) situations where adaptive management may be inappropriate or impossible to use (b) contingency plans in case things do not work as planned or (c) specific thresholds for action" (Delta Independent Science Board 5.15.14).	detailed adaptive management program be provided at this stage, since the goal of species recovery relies significantly on an effective adaptive management program.
Additional WQ Issues (selenium, mercury, bromide)	We also note that while CM1 would improve the water quality for agricultural and municipal water agencies that receive water exported from the Delta, water quality could worsen for farmers and municipalities who divert water directly from the	Monitoring and assessment of selenium fish tissue concentrations in the Delta should be conducted after implementation of CM1, regardless of the alternative selected to better understand actual project	Not specifically mentioned	7. Water Quality Strategy	Nothing this specific but it is needed for 404 permit. EPA **404(b)(1) Guidelines** prohibit the Corps from granting a permit for projects that violate state water quality standards.	"Water quality impacts to in-Delta users from a variety of causes are not adequately mitigated" (Delta Stewardship Council 5.29.14).	In that regard, we recommend the Supplemental Draft EIS consider measures to ensure that the project will not increase concentrations of bromide around the intake for the North Bay Aqueduct at Barker Slough. In addition, we recommend consideration of whether additional

	Delta.	effects and associated mitigation, adaptive management and regulatory activities by the Water Boards and others.					measures, such as operational modifications both upstream and downstream, are needed to eliminate increased mercury and selenium concentrations in the Delta.